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# Unilateral acts of States

## Replies from Governments to the questionnaire

### Report of the Secretary-General*

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* Prior translation and analysis of the material submitted, as well as the expectation of receiving additional replies to be incorporated into a single document, resulted in the delayed submission of the present document.

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# I. Introduction

1. At its fifty-third session, in 2001, the International Law Commission decided that the Special Rapporteur on the topic "Unilateral acts of States" should elaborate a questionnaire requesting materials from Governments and inquiring about their practice in the area of unilateral acts.[1] Pursuant to the request of the Commission, the Secretariat, on 31 August 2001, circulated to Governments the text of a questionnaire on unilateral acts of States.

2. As at 14 March 2002, replies to the questionnaire had been received from the Governments of Estonia, Portugal and the United Kingdom of Great Britain and Northern Ireland. Section II below contains the text of the replies received.

# II. Replies from Governments to the questionnaire

### General comments

## Estonia

[Original: English]
[14 March 2002]

The topic regarding unilateral acts of States presents many difficulties owing to its complexity and diversity. It should be mentioned that it is generally preferred to use other conventional and recognized methods of international practice, such as treaties, to produce effects upon the legal position of other States in their relations with Estonia. However, unilateral acts of States are not unknown to the practice of Estonia and the attempt to clarify and organize the general legal principles and customary rules governing such acts in order to promote stability in international relations is welcome. For these purposes some examples of unilateral acts are described below.

## Portugal

[Original: English]
[25 February 2002]

1. Portugal recognizes the important role played by unilateral acts in international relations and the need to develop rules to regulate their functioning. Thus, Portugal would like to contribute to the work of the International Law Commission on the issue and therefore submits a reply to the questionnaire circulated among States in August 2001.

2. It is our intention to refrain from general comments on the issue of unilateral acts and to limit ourselves to a direct answer to the questionnaire concerning recent State practice of formulating and interpreting unilateral acts. However, Portugal would like to make clear that, while concurring with the definition of unilateral acts proposed by the Special Rapporteur as reproduced in the report of the Commission on its fifty-second session,[2] i.e. "unilateral acts of a State means an unequivocal expression of will which is formulated by a State with the intention of producing legal effects in relation to one or more States or international organizations, and which is known to that State or international organization", it would like to stress that in its view it is international law, and not the State's intention, that provides for the legal force of unilateral acts in the international legal order.

## United Kingdom of Great Britain and Northern Ireland

[Original: English]
[27 February 2002]

1. The Government of the United Kingdom reiterates the views expressed in its note dated 3 March 2000.[3] The Government of the United Kingdom continues to consider that any approach which seeks to subject the very wide range of unilateral acts to a single set of general rules is not well-founded. The Government of the United Kingdom therefore reiterates its suggestion that the International Law Commission might consider whether there are specific problems in

[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10), paras. 29 and 254.

[2] *Fifty-fifth Session, Supplement No. 10* (A/55/10), p. 180, note 117.

[3] Reproduced in A/CN.4/511.

relation to specific types of unilateral acts which might usefully be addressed in an expository study.

**Question 1**
**Has the State formulated a declaration or other similar expression of the State's will which can be considered to fall, inter alia, under one or more of the following categories: a promise, recognition, waiver or protest? If the answer is affirmative, could the State provide elements of such practice?**

## Estonia

[Original: English]
[14 March 2002]

1. Under the Estonian legal order, the Riigikogu makes binding unilateral acts and there are three categories: statements, declarations and appeals; but the distinction between the unilateral acts is not very clear. The texts of the statements, declarations and appeals to other States and international organizations are prepared by the Ministry of Foreign Affairs.

2. In practice, the largest group is statements. Statements are mainly expressions of will or opinion of Estonia, most often political in their nature, and therefore they do not produce legal effects.

3. A number of unilateral declarations were made in the early 1990s, because of the specific and complicated historical and political situation that existed in Estonia at the time and due to the fact that the current Constitution of the Republic of Estonia had not been adopted yet.[4] Therefore, the competences of the various powers were not always very clear at the time. On 30 March 1990, the Supreme Council[5] adopted a decision[6] declaring that the de jure continuity of the Republic of Estonia had not been interrupted by the Soviet Union occupation of 1940. Although the Supreme Council was not at that time an organ of the Republic of Estonia, its unilateral acts with regard to the restoration of independence, concluded in August 1991, can be considered as producing legal effects.

4. The Supreme Council Statement on the coup d'état in the Soviet Union of 19 August 1991[7] can be considered a protest. The Supreme Council declared the coup d'état illegal and considered the bilateral negotiations with the Soviet Union for restoration of the independence of Estonia to be interrupted, whereby the Supreme Council was authorized to restore independence unilaterally according to the will of people expressed in the referendum of 3 March 1991.

5. The independence of Estonia was restored on 20 August 1991, with the Supreme Council decision[8] confirming the national independence of the Republic of Estonia and implementing the restoration of diplomatic relations.

6. On 19 December 1991, the Supreme Council issued a Statement on the Property of the Republic of Latvia and the Republic of Lithuania,[9] which could be considered a promise. The Supreme Council stated that, considering the restoration of independence of Estonia, Latvia and Lithuania, Estonia would guarantee the legal protection of property in conformity with the equality of legal protection of forms of property of the said States in Estonian territory in accordance with Property Law of Estonia.

7. In the practice of the past decade, there have also been some unilateral declarations corresponding to a State's position on a specific situation or fact.

8. On 20 December 1995, the Riigikogu issued a Statement of 24 July 1994 concerning Ratification of the Agreements on the Withdrawal of Russian troops from Estonia and about the Social Guarantees of Former Russian Military personnel.[10] The Riigikogu declared that those agreements did not alter the Estonian position on the illegal annexation of Estonia to the Soviet Union, nor could ratification of those agreements be interpreted to alter the principle of the legal continuity of Estonia since 1918. A communication addressed to Parliaments of Members of the United Nations was issued by the Riigikogu on

[4] The current Estonian Constitution entered into force on 3 July 1992.

[5] Legislative body at the time.

[6] Decision on the status of the Estonian State, adopted on 30 March 1990, ÜVT (Gazette of the Supreme Council), 1990, 12, 180.

[7] Statement of the Supreme Council of the Republic of Estonia on the coup d'état in the USSR on 29 August 1991, *Riigi Teataja* (State Gazette), 1991, 25, 309.

[8] Decision of the Supreme Council on Estonian National Independence, *Riigi Teataja*, 1991, 25, 312.

[9] *Riigi Teataja*, 1991, 45, 568.

[10] *Riigi Teataja* II, 1995, 46, 204.

22 February 1994, declaring Estonia's position on the occupation of Estonia in 1940.[11] These two examples reflect the Estonian position, which reaffirm the principles prescribed in Estonian legal acts.

9. The recognition of States and Governments is a unilateral act that under the Estonian legal system falls under the scope of the Government, for example, the recognition of the Republic of Slovenia on 25 September 1991. However, on 3 April 1990, the Supreme Council issued a statement on the restoration of independence of the Republic of Lithuania, recognizing Lithuania as an independent State. That exception could be explained by political reasons at the time.

10. Estonia issued a declaration recognizing as compulsory the jurisdiction of the International Court of Justice on 21 October 1991.[12]

11. In September 1992, when the new parliament, the Riigikogu, was elected, one of its first acts was the adoption of a declaration on restoration which explicitly stated that the present Republic of Estonia is the same subject of international law as that which was first declared in 1918.[13]

12. Unilateral declarations have been formulated also by the Ministry of Foreign Affairs. A recent example, in the context of terrorist attacks against he United States is the statement of 13 September 2001, declaring the readiness of Estonia, as a candidate State of the North Atlantic Treaty Organization, to provide assistance within Estonia's possibilities to the United States, which could be regarded as a promise.

## Portugal

[Original: English]
[25 February 2002]

1. Portugal would like to make the following remarks concerning, firstly, a series of protests made by Portugal against certain acts of Australia related to East Timor and, secondly, the recognition of East Timor's right to independence.

2. The Timor Gap Treaty[14] was at the origin of a legal dispute between Portugal and Australia. It was a treaty signed by Australia and Indonesia in 1989, establishing a zone of cooperation for the exploration and exploitation of the petroleum resources of the continental shelf of the area between East Timor and northern Australia. Portugal considered the Treaty to be in breach of Australia's obligations under international law.[15]

3. Between 1985 and 1991, from the negotiation and conclusion of the Timor Gap Treaty to the adoption of domestic legislation in Australia for the implementation of the Treaty, Portugal delivered a series of diplomatic protests[16] to the Australian authorities. In 1985, the Portuguese Government made known to Australia that it could not "but consider strange the attitude of the Australian Government in negotiating the exploration of the resources of a Territory of which Portugal is the administering Power, a fact which is internationally recognized ... the Portuguese Government cannot but express to the Australian Government its vehement protest for the manifest lack of respect for international law ...[17] ... In 1988, the Portuguese Government told Australia that "the ratification of such an agreement ... by the Australian Government would constitute a blatant and serious breach of international law ... The Portuguese Government will consider carefully any developments related to this issue and will act promptly according to international law in defence of the legitimate interests in question",[18] adding later that "the Portuguese Government declares its intention of appealing to the appropriate international authorities, at the proper time,

[11] *Riigi Teataja* I, 1994, 13, 235.
[12] *Riigi Teataja* II, 1996/24-25/95.
[13] Declaration of the Riigikogu on the Restoration of Constitutional State Authority, *Riigi Teataja*, 1992, 40, 533.
[14] Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (11 December 1989). The Treaty is reproduced in H. Krieger, *East Timor and the international community: Basic documents* (Cambridge University Press, 1997), pp. 346-355.
[15] See, for example, the final submissions at the closure of the oral pleadings reproduced in *Case concerning East Timor (Portugal v. Australia)*, 94-95. The decision of the Court is available at www.icj.cij.org.
[16] Reproduced in Annex 4 to the Application instituting Proceedings filed in the Registry of the Court on 22 February 1991, *East Timor (Portugal v. Australia)*, available at www.icj.cij.org. Also reproduced in H. Krieger, op. cit., pp. 359-364.
[17] 19 September 1985.
[18] 9 September 1988.

with the purpose of ensuring the rights of the people of East Timor, which the Portuguese Government has an obligation to consider and protect".[19] Again, in 1989, Portugal reiterated that, "as the administering Power for the non-autonomous Territory of East Timor, Portugal protests against the text of the above-mentioned declarations and reiterates its determination to approach the appropriate international authorities, in due time, to ensure the defence of the legitimate rights of the East Timorese people."[20] Two days after the signature of the Timor Gap Treaty, Portugal let Australia know its view on the matter once more: "The Portuguese authorities have consistently lodged diplomatic protests with the Government of Australia ... In those protests the Portuguese Government pointed out that the negotiation and the eventual conclusion of such an agreement with the Republic of Indonesia ... would constitute a serious and blatant violation of international law ... In proceeding with the signing of the above-mentioned agreement Australia is continuing and bringing to its conclusion that violation of the law ... In signing the 'Provisional Agreement' Australia acts in contempt, namely, of its duties to respect the right of the East Timorese to self-determination, the territorial integrity of East Timor and the permanent sovereignty of that people over its natural resources which are, partially, the object of the agreement ... The signing of this agreement interferes with and goes against the mediation efforts ... exercised by the Secretary-General, aiming at reaching a comprehensive settlement for that question ... In the light of the above, Portugal cannot but lodge its most vehement protest with the Government of the Commonwealth of Australia and state that it reserves itself the right to resort to all legal means it will consider as convenient to uphold the legitimate rights of the East Timorese."[21]

4. In 1991, Portugal decided to bring a case against Australia before the International Court of Justice.[22] With these acts of protest, Portugal manifested its intention "not to consider a given state of affairs as legal and ... thereby to safeguard its rights which have been violated or threatened.[23]

5. On the other hand, but on the same topic, Portugal also recognized, after the results of the popular consultation held in August 1999 were announced — and by which the majority of the East Timorese opted for independence — East Timor's right to independence, in a declaration that, it can be inferred, contains the recognition of a right to independence, after a transitional period during which the Territory is administered by the United Nations.

6. In a statement to the United Nations General Assembly at its fifty-fourth session, the President of the Republic of Portugal[24] said: "The people of East Timor democratically exercised on 30 August 1999 their right to self-determination and chose, by a clear and unequivocal majority, their collective future, thereby acquiring unconditionally and irrevocably, the right to constitute an independent State at the end of the transitional administration period that the United Nations will soon initiate."[25]

7. By that act, Portugal took note "of the existence of certain facts or certain legal acts and acknowledge[d] that they are available against it"[26] (recognition).

[19] 31 October 1988.

[20] 30 October 1989.

[21] 13 December 1989.

[22] Application instituting Proceedings filed in the Registry of the Court on 22 February 1991, *East Timor (Portugal v. Australia)*.

[23] *Fourth report on unilateral acts of States*, A/CN.4/519, para. 95.

[24] In accordance with article 293 of the Portuguese Constitution, the President of the Republic is competent to act at the international level in relation to East Timor.

[25] Statement by H.E. Mr. Jorge Sampaio, President of the Republic of Portugal, to the fifty-fourth session of the General Assembly of the United Nations (New York, 20 September 1999), posted on www.un.int/portugal/54agsampaio; see also A/54/PV.5.

[26] *Fourth report on unilateral acts of States*, A/CN.4/519, para. 91.

**Question 2**
**Has the State relied on other States' unilateral acts or otherwise considered that other States' unilateral acts produce legal effects? If the answer is affirmative, could the State provide elements of such practice?**

## Estonia

[Original: English]
[14 March 2002]

1. As the unilateral acts of Estonia can produce legal effects, this is also true of the unilateral acts of other States. Considering other States' unilateral acts as producing legal effects need not always be expressed in specific terms; even silence could probably in certain circumstances suffice. Therefore, such practice is not always clear.

2. Clearly, for example, in response to other States' recognition of Estonia, diplomatic relations have been established between the two countries with relevant consequences thereof.

3. An example could also be given in connection with the unilateral abolishment of visa requirements. For example, several States (e.g. Nicaragua, Dominican Republic, Ecuador) have unilaterally abolished visa requirements for Estonian citizens.

4. Another example of a unilateral act, although illegal, of another State that has produced legal effects for Estonia is a ukase of the President of the Russian Federation,[27] whereby Russia unilaterally began demarcating the land border between Estonia and Russia. Estonia has considered it illegal because of the fact that all matters that relate to border issues between the two States must be resolved bilaterally. Still, since the border agreement has been fully agreed but not yet signed, the ukase has produced effects. Russia has placed border guards on the unilaterally demarcated border and Estonia has done the same on its side in response.

## Portugal

[Original: English/French]
[25 February 2002]

1. Also in the context of the East Timor case before the International Court of Justice, Portugal took a position on certain unilateral acts of Australia, namely on its de jure recognition of Indonesia's sovereignty over East Timor and its legal effects. As stated in the Special Rapporteur's fourth report, recognition, which may be express or tacit, "is the procedure whereby a subject of international law, particularly a State, which was not involved in bringing about a situation ... accepts that such situation ... is available against it, or in other words acknowledges the applicability to itself of the legal consequences of the situation".[28]

2. Portugal considered that Australia had recognized de jure Indonesia's sovereignty over East Timor[29] and this unilateral act was considered incompatible with the East Timorese right to self-determination and thus in breach of Australia's legal obligations:

> "Portugal affirms that the de jure recognition of the incorporation of East Timor into a State has the inevitable consequence of the non-recognition of East Timor as a non-self-governing territory."[30]

> "The de jure recognition of the incorporation of East Timor into Indonesia is, first, incompatible with the correlative maintenance for its territory of the status of a non-self-governing territory. Secondly, it entails a clear disregard of East Timor's rights over its natural resources; and thirdly, it is utterly irreconcilable with respect for its people's right to self-determination."[31]

[27] Ukase of the President of the Russian Federation dated 21 July 1994 on the Demarcation of the Land Border between Estonia and Russia provided a demarcation of land boundary for the purpose of protecting the political and economic rights of Russia. *Sobranie zakonodatelstva Rossiskoi Federatsii*, No. 9, item 930 (1994).

[28] *Fourth report on unilateral acts of States*, A/CN.4/519, para. 91.

[29] *Case concerning East Timor (Portugal v. Australia)*, CR 95/12, available at www.icj-cij.org.

[30] Ibid., p. 11.

[31] Ibid., pp. 26-27.

**Question 3**
**Could the State provide some elements of practice concerning the existence of legal effects or the interpretation of unilateral acts referred to in the questions above?**

**It is of utmost importance for the Commission to receive, to the extent possible, precise references to State practice. In this connection, the Commission invites each State to provide copies or references of official or academic publications or other documents which reflect its practice.**

## Estonia

[Original: English]
[14 March 2002]

The legal effects or the interpretation of unilateral acts mentioned in the answers to questions 1 and 2 have mostly been referred to in the respective answers. With some unilateral acts the legal effects are obvious and clear, as is the case with statements guaranteeing legal protection to property of Latvia and Lithuania, recognition of other States or declarations of readiness to provide help to the United States. Even if a declaration does not give rise directly to legal rights or obligations in relation to third States, it may still be of legal significance for them in other ways, for example as evidence of conduct. This could be seen in declaring the principle of legal continuity of Estonia since 1918 and Estonia's position on its occupation.